SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1953**

---

# No. 627

---

WILLIAM B. COLLINS, INDIVIDUALLY, AND AS TRUSTEE FOR JEREMIAH F. COLLINS, VERA COLLINS, SISTER MARY ST. URSULA AND CLARA COLLINS,

*Petitioners,*

*vs.*

ANN O'BRIEN, JEREMIAH SULLIVAN, ESTATE OF CATHERINE SULLIVAN, DECEASED, AND ESTATE OF SUSAN S. IRVING, DECEASED,

*Respondents*

---

## REPLY BRIEF OF PETITIONERS FOR WRIT

---

*To the Honorable the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:*

Come now the Petitioners, William B. Collins, individually and as attorney for Jeremiah F. Collins, Vera Collins, Clara Collins and Sister Mary St. Ursula and beg leave of this Court to submit the following Reply Brief in answer to the Brief of the Respondents herein.

### ARGUMENT

Counsel for Respondents at page 7 of the brief cites and quotes Rule 81(a)(1) of the Federal Rules of Civil Procedure and contends that these Rules do not apply to pro-

bate etc. and follows with a statement that our argument "is *frivolous and without merit.*" (Emphasis added).

Rule 1(b) "Rules of the District Court For the United States for the District of Columbia" provide: "(b) *Application to Probate, Adoption and Lunacy Proceedings.* In probate, adoption and lunacy proceedings the Federal Rules of Civil Procedure and these General Rules apply so far as practicable and to the extent that matters of procedure are not specifically provided by statute or Rules of this Court." Rule 83, F.R.C.P. gave the District Court of the District of Columbia the right to adopt these Rules and said Court is required to file the same in this Court.

Counsel uses Rule 24 F.R.C.P. for his so-called intervention. Judge Pine in Memorandum of July 2, 1952, cites Rule 53(e)(2), of F.R.C.P. regarding the Findings of the Special Master (Rec. 73(a)). So does the Court of Appeals in its Per Curiam decision. (R. 178) (R. 96a). We contended and we still contend that Rule 60 (b) F.R.C.P. was applicable. The F.R.C.P. governed proceedings before the Special Master and before both lower Courts. It is strange that if Rule 53(e)(2) is used in both Courts in this case regarding the Findings of the Special Master, that we were denied the use or application of the last sentence of said Rule 53(e)(2) in both Courts; It provides: "*The Court after hearing may* adopt the Report or may modify it in whole or in part or may receive further evidence or may re-commit it with instructions." (Emphasis added) (R. 98). We were denied a hearing on our exceptions to the First Report and Award of the Special Master before the proceeding was recommitted. All proceedings before the Special Master were under Rule 53, F.R.C.P. and the District Court of the District of Columbia adopted these Rules for Probate proceedings. Rule 24 of these Rules was used by the Respondents in attempting to get into the proceed-

ings. There is no other Rule or Statute governing their so-called intervention and Rule 24 applies.

Furthermore, the contest now before this Court is not strictly a probate proceeding. It is a contest between two sets of claimants—adversaries—and not a probate proceeding entirely though it arose out of and stemmed from the administration in Probate of an intestate estate. The very first sentence of the *Per Curiam* decision of the Court of Appeals shows that: "This case involves competing claims to the estate of James L. Collins, who died intestate." (R. 177)

In the leading case of *O'Day* v. *Sup. Ct. L. A. Co.*, 116 Pac. 2d, 621; 18 Cal. 2d, 540, the Court said: (8-10) "Such a proceeding to determine heirship, which is in essence a proceeding *in rem*, but also constitutes to a certain extent, an adversary contest."—— ——

——"When conflicting claims are involved the proceeding becomes an adversary one and partakes of the nature of a civil action."

We contend that the F.R.C.P. adopted by the District Court of the District of Columbia apply to this proceeding. Counsel for Respondents can't avail himself of the first portion of Rule 53(e)(2), F.R.C.P. and blank out the latter part of the Rule to the effect that "*The Court after hearing* may adopt the Report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions." (Emphasis added) (Rec. 98)

We note that the Respondents' brief in opposition to our petition for a Writ of Certiorari cites only two cases, neither one of which has any bearing on the issues raised by our petition for a Writ. We also note that they have not here nor in the lower Courts attempted to answer our brief on "due process," "collateral attack" nor our argu-

ment on 60(b) F.R.C.P., nor on the illegal "stay order" of May 18, 1949, nor on "final orders" in a probate proceeding, our argument on "reopening a closed proceeding" in violation by the District Court of Title 11-512, District of Columbia Code, on the limitation of Courts of Probate to *express* powers granted by the Code, all of which above arguments are based on cases cited, many of them from this Court. Nor have they made any specific argument to show that our cited authorities do not govern in the case at bar.

On page 8 of their brief counsel for Respondents quotes from the Amended Report and Award. The fact is that counsel for these petitioners at that time violated our instructions by secretly filing cross interrogatories for a deposition set for hearing in Ireland. We discovered these cross-interrogatories by accident in checking the record and promptly demanded that he withdraw these cross-interrogatories and he then withdrew from the case. But this did not give the Respondents any right to fail to give us notice of the time and place of many hearings had and depositions taken thereafter in this case.

Petitioners had no right under the May 18th, 1949 Order to place in the record evidence *against* the later claims and could and would have been placed in contempt if they sought to do so. (See Rec. 54a-55a) (See also Rec. 50a-54a). The May 18, 1949 Order provided in Ten different places only "evidence in favor of" the later claims should be accepted. The lack of "due process" in the Order could never be cured by a counsel violating instructions.

On page 5 of Respondents' Brief under (1) counsel argues their "right to intervene in the suit before final determination" thereof in case of service by publication. The Court of Appeals in its decision followed this line of argument and was misled. In order to interevene at all

the application must be "timely" and must not interrupt the orderly procedure of the trial. Under Rule 24, F.R.C.P. the application must be "timely," and regardless of this Rule must be "timely" under all the decisions in the books.

There has not been to this day a "final determination of the suit" (Title 13-113 D.C. Code) and there will not be such "final determination" until this Court finally settles the matter. Even today, before the Court acts upon our petition for the writ, and before it finally decides the issues herein, some other tardy claimant might come along claiming to be a son of James L. Collins deceased. Under the decision of the Court of Appeals and the contention of counsel he could "intervene in suit before the final determination" and the District Court could stay all proceedings on the "Amended Report and Award" just as it did on the First Report and Award and the matter dragged on and on interminably through the years and we would have another Charles Dickens' "Bleak House."

It is not fair play nor is it "due process" when petitioners were compelled to produce their evidence on May 12, 1948, were denied more time, the record closed; and with the reopening of the case to others specifically named in the Order of May 18, 1949, were placed under a stay order preventing further participation for three long years; and more particularly, when we requested that if the matter was opened up as to the new claimants that it also be opened up as to us. (Rec. 74a)

In conclusion this Court must determine whether the right to appeal can be suspended for three years as to these petitioners while secret hearings are held in Ireland, in Washington from which petitioners are excluded by express order given in violation of the Federal Rules of Civil Procedure which must apply if total chaos is to be avoided in Probate and Heirship proceedings. There is no adequate

provision in the District of Columbia Code for the conduct of heirship proceedings or for the appointment of a Special Master or for his Report to the Court.

In the First Report and Award, the Special Master states:

"It having been found impracticable to hold the first meeting of the parties or their attorneys within the 20 day limitation set forth in Federal Rule 53(d) * * * " (Original Record, 3122)

This clearly shows the Special Master intended to proceed under the Federal Rules and this portion of the First Report and Award has been affirmed by the Amended Report and Award and by the Judgment of the District Court affirming and adopting and confirming the same. This proves beyond doubt that all the Federal Rules of Civil Procedure including Rule 60(b) and Rule 24, F.R.C.P. as well as Rule 53 Federal Rules of Civil Procedure apply and have been applied.

Respectfully submitted,

WILLIAM B. COLLINS.

4

FILED
APR 24 1954
HAROLD B. WILLEY, CL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

---

# No. 627

---

WILLIAM B. COLLINS, INDIVIDUALLY, AND AS TRUSTEE FOR JEREMIAH F. COLLINS, VERA COLLINS, SISTER MARY ST. URSULA AND CLARA COLLINS,
*Petitioners,*

*vs.*

ANN O'BRIEN, JEREMIAH SULLIVAN, ESTATE OF CATHERINE SULLIVAN, DECEASED, AND ESTATE OF SUSAN S. IRVING, DECEASED,
*Respondents*

---

**PETITION FOR REHEARING ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.**

---

WILLIAM B. COLLINS,
*Counsel for Petitioners.*

ROBERT L. COLLINS,
*Of Counsel.*